

WAC 458-20-17901 Public utility tax--Energy conservation and cogeneration deductions. (1) Introduction. This section explains certain deductions from the public utility tax which are intended to be an incentive to promote conservation and efficiency of energy. The question of the deductibility of any expenditures not expressly covered in this rule must be submitted to the department in writing for a ruling before the deduction may be taken. The incentive programs for energy efficiency are discussed in RCW 82.16.052 and 82.16.055. Most of the provisions in RCW 82.16.055 expired on December 31, 1989, and were replaced by RCW 82.16.052 which became effective on March 1, 1990. These incentive programs are discussed below.

(2) Deductions under RCW 82.16.055. In chapter 149, Laws of 1980 (RCW 80.28.024, 80.28.025, and 82.16.055), the legislature finds and declares that the potential for meeting future energy needs through conservation measures, including energy conservation loans, energy audits, and the use of renewable resources, such as solar energy, wind energy, wood, wood waste, municipal waste, agricultural products and wastes, hydroelectric energy, geothermal energy, and end-use waste heat, may not be realized without incentives to public and private utilities. The deductions under this law apply only to new facilities for the production or generation of energy from cogeneration or renewable energy resources on which construction was begun after June 12, 1980, and before January 1, 1990, and for measures to improve the efficiency of energy end-use which were begun after June 12, 1980, and before January 1, 1990.

(a) The legislature has implemented its intent by adding a new section to chapter 82.16 RCW, codified as RCW 82.16.055, for deductions relating to energy conservation or production from renewable resources. The law states that in computing tax under this chapter there shall be deducted from the gross income:

(i) An amount equal to the cost of production at the plant for consumption within the state of Washington of electrical energy produced or generated from cogeneration as defined in RCW 82.35.020; and

(ii) An amount equal to the cost of production at the plant for consumption within the state of Washington of electrical energy or gas produced or generated from renewable energy resources such as solar energy, wind energy, hydroelectric energy, geothermal energy, wood, wood wastes, municipal wastes, agricultural products and wastes, and end-use waste heat.

(b) The law also contained a deduction for those amounts expended to improve consumers' efficiency of energy end-use or to otherwise reduce the use of electrical energy or gas by the consumer, provided the installation of the measures to improve the efficiency was begun prior to January 1, 1990.

(c) Deductions under subsection (2)(a) of this section shall be allowed for a period not to exceed thirty years after the project is placed in operation.

(d) Measures or projects encouraged under subsection (2) of this section shall at the time they are placed in service be reasonably expected to save, produce, or generate energy at a total incremental system cost per unit of energy delivered to end-use which is less than or equal to the incremental system cost per unit of energy delivered to end-use from similarly available conventional energy resources which utilize nuclear energy or fossil fuels and which the gas or electric utility could acquire to meet energy demand in the same time period.

(e) The provisions of subsection (2)(a)(i) through (ii) of this section, deal with new facilities designed and intended for the production of energy. The department will rule upon eligibility of such facilities and the attendant cost of energy production for purposes of determining deductibility from the public utility tax upon an individual project basis using the cost figures reported on the appropriate Federal Energy Regulatory Commission (FERC) schedules that are required to be filed by public and private electric utilities and by private gas utilities. The allowable deductions consist of production expenses, eligible fuel costs and book depreciation of capital costs. Eligible fuel costs are all fuels if used for cogeneration or

nonfossil fuel costs if not a cogeneration facility. Plans for the construction of such facilities and pertinent details, including energy production and production costs projections relative to the planned facility or construction details and energy production costs for facilities already in service must be submitted to the department for determination of eligibility for tax deductions.

(3) Deductions under RCW 82.16.052. This law provides a deduction from the public utility tax for certain energy efficiency programs. The law took effect on March 1, 1990, and expires on January 1, 1996.

(a) The law provides for a deduction from the gross income in computing tax under the public utility tax for payments made under RCW 19.27A.035. RCW 19.27A.035 requires that electric utilities make payments to owners at the time of construction of residential buildings if certain energy code requirements are met.

(b) Until July 1, 1992, utilities could deduct from the amount of tax paid under the public utility tax fifty percent of the payments made under RCW 19.27A.055, excluding any federal funds that are passed through to a utility for the purpose of retraining local code officials. RCW 19.27A.055 provides a training account for the purpose of providing training for the enforcement by local governments of the Washington state energy code.

(c) RCW 82.16.052 provides a deduction for amounts expended on additional programs that improve the efficiency of energy end-use if priority is given to senior citizens and low-income citizens in the course of carrying out such programs. The department of revenue has determined the eligibility of individual measures to improve consumers' efficiency of energy end-use or otherwise reduce the use of electrical energy or gas by the consumer. Such measures include residential and commercial buildings weatherization programs as well as energy end-user conservation programs, however designated and however funded or financed.

(i) "Senior citizens" means those persons who are sixty-two years of age or older.

(ii) "Low-income citizens" means a single person, family or unrelated persons living together whose adjusted income is less than eighty percent of the median family income of those families within the area served by the utility service provider. (See RCW 43.185A.010.)

(iii) Utility businesses may show that priority is given to senior citizens or low-income citizens by various means. For example, it will be presumed that priority has been given these citizens when the utility business can show that it spends disproportionate larger amounts for energy conservation and efficiency measures for these citizens. Priority is also considered given to senior and low-income citizens when the utility can show that these citizens are given preference for participation in programs that improve the efficiency of energy end-use when program resources are limited and all applicants are not able to receive assistance in a timely manner and the utility communicates to senior and low-income citizens the availability of energy efficiency programs through fliers, brochures, posters, newspaper announcements, and billing inserts.

(d) Under the general rules of statutory construction, tax exemption provisions must be strictly construed against the person claiming the exemption and in favor of imposing tax. Also, under such general rules the words and terms used in statutes must be given their common and ordinary meaning. By the terms of RCW 82.16.052 (1)(b) deductions are restricted to amounts expended for programs and measures which have as their purpose some reduction of energy use by utilities' customers. Some incidental and generally related costs which may be incurred in the development and implementation of energy conservation measures may be too remote from the purpose of improving energy efficiency or reducing consumers' energy consumption. For these reasons and pursuant to RCW 82.16.052(2) the department has consulted with publicly and privately operated utilities to determine the kinds of costs which will satisfy the statutory intent by achieving the purpose of reducing energy consumption.

(e) Accordingly, the term "amounts expended to improve consumers' efficiency of energy end-use" means the costs incurred by public and private

utilities which are exclusively attributable to the development and implementation of energy end-use conservation projects and measures. This term does not include the costs attributable to the operation of a public or private utility business which were incurred before, or are incurred separate from the development and implementation of energy conservation programs. A portion of expenditures for personnel and facilities serving both energy conservation purposes and other utility purposes may be deducted if the portion attributable to energy conservation is supported by direct cost accounting records prepared during the tax reporting period for which such energy conservation expenditures are claimed for deduction. However, merely estimating an allocable portion of costs or apportioning some percentage of total overhead expense claimed to be related to energy conservation projects or measures will not support a deduction. The accounting should be based on actual experience. For example, expenditures for personnel or such facilities as computers could be accounted for on a time-use basis. However the expenses are accounted for, the burden rests upon the utility company to clearly show the direct relationship between any costs claimed for deduction and the energy conservation projects or measures claimed to have generated such costs.

(f) **Eligible costs.** Under the remoteness test, the department has determined the following specific costs to be eligible for tax deduction:

(i) **Construction and installation.** All costs actually incurred by a utility representing the value of materials and labor applied or installed in any facility of or for an energy end-user, whether provided by the utility itself or by third party prime or subcontractors. Such eligible costs include, but are not limited to:

(A) Insulation for floors, ceilings, walls, water pipes and the complete installation thereof.

(B) Weatherstripping, caulking, batting, and any similar materials applied for weatherization of facilities and the complete installation thereof.

(C) Storm windows, insulated and other weather resistant glass or similar materials and installation.

(D) Electric or gas thermostatic controls and installation.

(E) Water heater wraps, shower head restrictors, and all similar devices installed to reduce heat loss or reduce the actual units of energy consumed, and the installation thereof.

(F) Energy efficient lighting, lighting controls, and installation.

(G) Energy efficient motors and adjustable speed drives.

(H) Improved energy efficient heating, ventilation, and air conditioning systems.

(ii) **Energy audits and post installation inspection.** All direct costs actually incurred for providing:

(A) Energy audit training.

(B) Auditor payroll.

(C) Auditor uniforms.

(D) Special tools and equipment specifically needed for carrying out audit programs.

(E) Auditor and inspector private vehicle mileage allowance.

(F) Post installation inspection, labor, and materials costs.

(iii) **Administration.** All administrative, clerical, professional, and technical salary and payroll costs actually and directly incurred for:

(A) Conservation program management and supervision including but not limited to audit, BPA buy-back, commercial, solar, and loan programs.

(B) Secretarial and clerical expense.

(C) Data entry and information processing operators.

(D) Engineering.

(E) Outside legal expense and inhouse legal expense which is directly cost accounted.

(F) General energy conservation employee training.

(G) Conservation programs accounting and auditing.

(H) Separate telephone and third party provided services separately billed.

(iv) **Consumable supplies and equipment.** The cost of consumable

materials and equipment utilized in energy conservation programs and directly cost accounted or separately billed, including but not limited to:

- (A) Equipment rental.
- (B) Custom software programs.
- (C) Computer lease time.
- (D) Computer print-out paper.
- (E) Special conservation program stationery, program instruction and installation manuals and office clerical supplies.

(F) Periodic costs of capital equipment and rolling stock if such equipment and rolling stock are attributable to an energy end-user conservation program; and such costs are incurred during the duration of such program.

(G) Direct costs of repair and maintenance of the above items.

(v) **Financing.** Deduction is allowed for all direct financing and loan expenses relative to:

(A) Loan manager, supervisor, inspectors, secretaries, and clerks payroll which is directly cost accounted.

(B) Net interest differential (loans to consumers at lower than the utilities' interest rates on such acquired funds).

(vi) **Advertising and education.**

(A) Information, dissemination, and advertising charges for radio, television, newspaper services, bill stuffers, brochures, handouts, displays, and related costs of producing and presenting such advertising materials, which are exclusively dedicated to promoting energy conservation projects and measures.

(B) Community education and outreach efforts conducted for the exclusive purpose of promoting energy conservation and achieving reduction of end-user energy consumption.

(g) **Ineligible costs.** The department has determined the following specific costs as being ineligible for tax deduction for the reason that they are too remote from the purpose of improving energy efficiency and reducing end-user's consumption:

(i) Legislative services.

(ii) Dues, memberships and subscriptions.

(iii) Information, dissemination, and advertising charges for radio, television, newspaper services, bill stuffers, brochures, handouts, displays, and related costs of producing advertising materials which are not exclusively for the purpose of encouraging or promoting energy conservation.

(iv) Experimental programs. Caveat: If and when experimental programs and the facilities, projects, or measures developed through such experimentation, research, and development are actually placed in service or placed in the rate base, and upon written approval of eligibility by the department, the total of expenditures for such facilities, projects, or measures including experimental stage costs may be allowed for deduction.

(v) Community education and outreach efforts which are not exclusively dedicated to energy conservation projects and measures.

(vi) Allocated facility costs which are not directly cost accounted.

(vii) Allocated vehicle rolling stock costs which are not directly cost accounted.

(viii) Convention, meals, and entertainment expense.

(ix) Out-of-state travel expenses, except that the percentage of such expenses allocable to miles traveled within this state will be allowed for deduction.

(4) Timing of the deduction. Utilities may deduct from the measure of public utility tax deductible expenses as set forth in this rule at the time such costs are actually incurred and may include such deductions on excise tax returns covering the period during which the costs were actually incurred. For purposes of reporting public utility tax liability, utilities must include and report Bonneville Power Administration (BPA) and other providers' cash grants, reimbursements, and buy-back payments attributable to energy conservation programs as gross income of the business when it is received. "Gross income of the business" shall also include the value of electrical energy units from BPA for performing approved energy conservation services.

Any recurring costs determined to be eligible for deduction under this rule shall cease to be eligible in whole or in part at time of termination of any energy conservation measure or project which originally authorized the deduction under RCW 82.16.052.

[Statutory Authority: RCW 82.32.300. 93-07-066, ' 458-20-17901, filed 3/17/93, effective 4/17/93; 86-01-077 (Order 85-7), ' 458-20-17901, filed 12/18/85.]